

Notice of Allowability

Application No.

10/046,671

Applicant(s)

BOOT ET AL.

Examiner

Bo Peng

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/10/06.
2. ☒ The allowed claim(s) is/are 10,12-18,21,22 and 31.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>5/30/06</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

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1. Applicant's amendment, filed on October 10, 2006, is acknowledged. Claim 10 is amended in the response to the Final Action dated on August 18, 2006. Claims 10, 12-18, 21, 22 and 31 are pending.
2. The rejection of claims 10, 12-18, 21, 22 and 31 under 35 U.S.C. 103(a), as being unpatentable over Vakharia (5,871,744), Mundt (1999) and Muller (1982), **is withdrawn** in view of the amendment and Applicants' argument.

EXAMINER'S AMENDMENT

4. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.
5. Authorization for this Examiner's Amendment was given in a telephone interview with Attorney Allen Turner on October 19, 2006.
6. Amend claim 10:

A method for obtaining an infectious recombinant very virulent Infectious Bursal Disease Virus (vvIBDV), said method comprising:

transfecting at least one first cell, which cell is non-permissive for vvIBDV, with a recombinant nucleic acid comprising a vvIBDV genome;

incubating said at least one first cell in a culture medium, so as to produce recombinant vvIBDV which recombinant vvIBDV does not infect said at least one first cell, and which further

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retains its vvIBDV character;

rescuing said recombinant vvIBDV from said at least one transfected first cell or said culture medium; and

propagating said recovered rescued recombinant vvIBDV in at least one second cell which is permissive for said vvIBDV.

7. The following is an examiner's statement of reasons for allowance:

(1) The rejection of claims 10, 12-18, 21, 22 and 31 under 35 U.S.C. 103(a), as being unpatentable over Vakharia (5,871,744), Mundt (1999) and Muller (1982), **is withdrawn** in view of the amendment and Applicants' argument.

(2) Claims 10, 12-18, 21, 22 and 31 are free of the prior art of the record. The Examiner is not aware of any suggestion in the prior art of the record that would point the artisan to the claimed method for obtaining a vvIBDV without losing its vvIBDV character by (1) transfecting a first non-permissive cell with a recombinant nucleic acid comprising a vvIBDV genome, and (2) rescuing the recombinant vvIBDV in a second permissive cell for the growth of vvIBDV. Neither the reference nor other prior art has shown and suggested a method of obtaining vvIBDV without losing its vvIBDV character.

8. Accordingly, Claims 10, 12-18, 21, 22 and 31 are allowed.

9. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for

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Allowance.”

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bo Peng, Ph.D. whose telephone number is 571-272-5542. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, Ph.D. can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Bo Peng, Ph.D.
10/23/06


MARY E. MOSHER, PH.D.
PRIMARY EXAMINER